IN THE

Supreme Court of the United States,

No. ~~171~~ 56. December Term, 1870.

Francis J. Collier and four others, Plaintiffs below and Plaintiffs in Error,

vs.

Washington and Jefferson College.

GEO. W. WOODWARD,
JAMES VEECH,
GEO. SHIRAS, Jr.
BOYD CRUMRINE,
Of Counsel for Plaintiffs in Error

PRINTED BY BAKEWELL & MARTHENS, PITTSBURGH.

In the Supreme Court of the United States,

DECEMBER TERM, 1870.

FRANCIS J. COLLIER AND FOUR OTHERS,
Plaintiffs below and Plaintiffs in error,
vs.
WASHINGTON AND JEFFERSON COLLEGE
No. 471.

In error to the Supreme Court of Pennsylvania.

BRIEF OF PLAINTIFFS IN ERROR.

STATEMENT.

This cause—with Nos. 470 and 472—comes up on a writ of error to the Supreme Court of Pennsylvania, to review the decree of that Court sustaining the validity of an Act of Assembly of that State, which the plaintiffs claim is repugnant to the 1st division of the 10th section of the Constitution of the United States, which forbids any State to pass any law impairing the obligation of contracts.

The record brought up presents the following case:

The plaintiffs, who were of the minority of the Board of Trustees of the corporation, defendants, dissenting from the action complained of, on August 24, 1869, filed in the Supreme Court of Pennsylvania a bill in equity against the defendants—(Printed Tr. of record, pp. 1, 2, 3,) wherein they set forth:

1. That Jefferson College was incorporated by an Act of Assembly of Pennsylvania, approved January 15, 1802, entitled "An Act for the Establishment of a College at Canonsburgh, in the County of Washington, in the Commonwealth of Pennsylvania."

2. That said College, organized under said act, accumulated from time to time property and money, in value, $150,000; also, over $5,000 for the special purpose of educating poor and pious young men for the gospel ministry; and that in 1853 the Trustees thereof devised and put in operation a plan of endowment, evidenced by certificates of scholarships, issued on payment of specified sums of money into the Corporate Treasury; whereby the holders became entitled to tuition, &c., at the College in Canonsburgh, many being sold to residents in and near that town, because thereby tuition was to be given there; that some 1,500 of these certificates were issued, of which some 1,200 are yet outstanding.

3. That on the 4th of March, 1865, the Legislature of Pennsylvania passed an act entitled "An Act to unite the Colleges of Jefferson and Washington, in the county of Washington, and to erect the same into one Corporation, by the name of Washington and Jefferson College;" that said several Colleges accepted said act and consummated the new organization. That by said act all the buildings and property of Jefferson College, and the Senior, Junior and Sophomore classes were to remain at Canonsburgh, and the obligations of said scholarships were to be assumed by the new Corporation, the defendants.

4. That Jefferson College accepted said act upon the

faith of saidprovisions therein contained being kept and performed.

5. That defendants, in utter disregard of said provisions of said act, are about to dispose of the College buildings at Canonsburgh, and remove its classes and movable property to Washington, or elsewhere, which defendants claim a right to do, by virtue of a vote to that end by two-thirds of their Trustees, according to the terms of another Act of Assembly, approved February 26th, 1869.

6. That the said Act of 1865, providing for the continued maintenance of said College and said three classes at Canonsburgh, and its acceptance, constituted a contract between the parties thereto; and that said scholarships, which defendants were to satisfy and perform, were also contracts to be performed at Canonsburgh by the defendants.

7. That said Act of 1869, in that it provides for the removal of the College property and classes from Canonsburgh, without the consent of the holders of said scholarships and donors to said special fund, impairs the obligations of subsisting contracts, and is repugnant to the 17th section of Article IX of the Constitution of Pennsylvania, and to section X (division 1st) of the Constitution of the United States.

8. That plaintiffs have opposed the removals complained of, but that a majority of the trustees of the corporation, defendants, are about to take the same to Washington, a village seven miles distant.

The *Prayer* of the bill is:

1. That said Act of 1869 be declared void, because repugnant to the designated prohibitions of the Constitutions of Pennsylvania, and of the United States.

2. That defendants be enjoined from removing said property and classes from Canonsburgh to Washington, or elsewhere.

3. Other and further relief, &c.

ABSTRACT OF ACTS OF ASSEMBLY,

Appended to and made part of Bill.

ACT OF JANUARY 15, 1802, (Record, p. 4.)

Its *title* is "An Act for the establishment of a College *at Canonsburgh*, in the county of Washington, in the Commonwealth of Pennsylvania."

Its *preamble* is "Whereas, the establishment of a College *at Canonsburgh*, in the county of Washington, for the instruction of youth in the learned languages, in the arts and sciences, and in useful literature, would tend to diffuse information and *promote the public good.*"

Sect. 1. "That there be erected and hereby is erected and *established in Canonsburgh*, in the county of Washington, a College, &c., under the management, direction and government of a number of trustees, not exceeding twenty-one, &c.

Sect. 2. "Said trustees and their successors shall *forever hereafter be* one body politic and corporate, with *perpetual succession* in deed and in law, to all intents and purposes whatever, by the name, style and title of "The Trustees of Jefferson College *in Canonsburgh*, in the county of Washington." They are given the usual corporate powers—to take and hold lands, moneys, &c., to sue and defend in courts, &c., with all other powers, &c., usual in other Colleges in the United States.

Sect. 3, provides for meetings of the trustees "at the town of Canonsburgh," for making by-laws and ordinances for the government of the College, appointing principal and professors, &c., and careing for the corporate property.

Sect. 4, provides for the College faculty and its powers.

Sect. 5, provides for the succession in the trustees, how misnomers in gifts or grants by deeds, or in devises or bequests, shall be treated; adding,

"And the constitution of the said College herein and hereby declared and established, shall be and remain the inviolable constitution of the said College forever, and the same shall not be altered or alterable by any ordinance or law of the said trustees, nor in any other manner than by an Act of the Legislature of this Commonwealth."

Sections 6, 7 and 8 are unimportant here.

ACT OF MARCH 4, 1865. (Record, p. 7.)

Its *title* is "An Act to unite the Colleges of Jefferson and Washington, in the county of Washington, and to erect the same into one corporation, under the name of Washington and Jefferson College."

Its *preamble* recites that "the trustees of those Colleges (Jefferson and Washington) *have agreed upon a union* thereof, and have besought this General Assembly to *give thereto* the sanction and aid of a legislative enactment."

Sect. 1, unites said two Colleges into one corporation by the name aforesaid.

Sect. 2, vests all the property and funds of each in the new corporation, "and all the several liabilities of said two Colleges or corporations, by either of them suffered or created, including the scholarships heretofore granted by, and now obligatory upon each of them, are hereby imposed upon and declared to be assumed by the corporation hereby created, which shall discharge and perform the same without diminution or abatement."

Sect. 3, declares the objects of the corporation.

Sections 4 to 9, provide for how the trustees are to be selected and continued, and prescribes their powers and duties.

Sect. 10, directs that there shall be four periods or classes of study, of a year each, denominated the Freshman, Sophomore, Junior and Senior classes.

Sect. 11, creates two additional departments of study, the Scientific and Preparatory; the first to qualify students for business avocations, the second for admission to the first, or to the Freshman class of the College.

Sect. 12, provides prospectively for an agricultural department.

Sect. 13, declares "that the studies of the Senior, Junior and Sophomore classes shall be pursued at or near Canonsburgh, in the county of Washington, and those of the Freshman class and of the Preparatory, Scientific and Agricultural departments at or near Washington, in said county," and provides for how the income of endowment funds shall be apportioned, &c.

Sect. 14, commits the instruction and government of the three higher classes named, to the President and Professors of those classes, and the instruction and government of the Freshman class and the departments, to the Vice President and Professors, or instructors of their appropriate studies, &c.

Sections 15, 16 and 17 are unimportant here.

Sect. 18. "That from and after the organization of the corporation hereby created, as herein provided, the Colleges of Jefferson and Washington, named in the first section of the act, shall be dissolved, except so far as may be found necessary to enable them to close up their business affairs and to perfect the transfer of their property and rights to the corporation by this act created."

ACT OF FEBUARY 26, 1869. (Record, p. 11.)

It is entitled "*a supplement*" to the Act of March 4, 1865.

Sect. 1. "That as soon as the necessary preliminary arrangements can be made and suitable buildings pro-

vided, the *several departments* of Washington and Jefferson College shall be closely united, and located either at Canonsburgh, Washington, or some other suitable place within this Commonwealth, to be selected and fixed in the manner hereinafter specified."

Sect. 2. "The location of the College shall be determined by the Board of Trustees by a vote of not less than two-thirds, &c., if they can agree, and if they cannot agree within sixty days after the passage of this act, the question of location shall be referred to a commission of five gentlemen." Then, after prescribing the mode of procedure, it directs that they "shall report to the Board of Trustees in writing, where, in their judgment, the united College shall be located, and thereupon the Board of Trustees shall proceed, with as little delay as possible, to carry into effect their recommendation."

Sect. 3. "The commission, if resorted to, shall be chosen by the Board of Trustees," by a two-thirds vote, &c.

Sect. 4 is unimportant.

Sect. 5, provides for an "academy, normal school or other institution of lower grade than a college," to be given by the trustees to the unsuccessful one of the two places named, or to both, if the College is taken "elsewhere," with some real or personal property of the College for the use of such academy, &c.

Sect. 6. "It shall be lawful for any incorporated college or institution of learning within this Common, wealth to unite with Washington and Jefferson College and consolidate their property and funds for educational purposes, on such terms and conditions as may be agreed upon."

The *Answer* of defendants—(Record, p. 13,)—admits the allegations in the 1st section of the bill; also, those in the 2d, with qualifications as to value of property and the special fund. The *form* of scholarship certificates is admitted, but it is denied that thereby the holders became entitled to tuition at Canonsburgh only. They admit sales of many to residents of Canonsburgh and vicinity, but make no admission as to the alleged motives or inducements.

They also admit the Acts of 1865 and 1869, as set forth—the acceptance of the former by the Trustees of both the old Colleges, and of the latter by those of the new one, asserting that under the latter act the location of the College has been fixed at Washington.

The Answer then asserts that the Trustees of Washington and Jefferson College, on June 9, 1869, "*resolved to bring together at Washington all the College classes*," and that then, and "at their subsequent meeting on August 4, 1869, they made appropriate and complete arrangements for the organization and conduct of said Institution, and the instruction and discipline of *all the College classes at Washington*, and that they made *no provision whatever* for the conduct of any department of the said College at Canonsburgh thereafter. They deny having yet removed any of the College property ftom Canonsburgh, or disposed of the several College buildings there; but say that they "*intend* to dispose of and devote the same in strict conformity with the Act of 1869, whenever they may lawfully do so."

The Answer denies that the Act of 1869 is invalid or unconstitutional; and asserts that two of the plaintiffs did not vote against the removal to Washington, and that the other three voted for the removal of the Washington department to Canonsburgh.

The *Answer* then—(Record, pp. 14, 22)—goes into a history of the two old Colleges, and of the efforts and proceedings which resulted in the union of 1865; assert-

ing, *inter alia*, that "the *two boards* besought the General Assembly for the passage of the Act of March 4, 1865, but that the Act of 1869 was procured to be enacted only by the Trustees of "Washington and Jefferson College."

It is no where asserted that any of the holders of scholarships had any agency whatever in promoting the union, or that they knew of, or accepted tuition under it; or that any of them had any agency in procuring the Act of 1869.

The Answer further shows—Record, pp. 15 and 21,)—that the draft of the Act of 1869, almost in *hæc verba*, was prepared and first adopted by the Trustees of Washington and Jefferson College, who sent a committee to the Legislature to "procure" its passsge.

The cause was set for hearing on Bill and Answer at the November Term, 1869, of the Supreme Court of Pennsylvania, and was heard in connection with the two other cases now in *this* Court—(Nos. 470 and 472,)—the decrees dismissing the bills being pronounced in January, 1870, whereto the writs of error in this and the other two cases were sued.

The *Opinion* and *Decrees* of the Court below were by the Chief Justice (Thompson), and are found on pp. 23–28 of the printed Record in *this* case.

The *Error* assigned and complained of here is to the decree dismissing plaintiff's bill, and denying its prayer; thereby, as plaintiffs claim, sustaining the Act of 1869, which empowers defendants to remove the entire College from Canonsburgh, in violation of the contract between the Trustees of Jefferson College and those of Washington College, as expressed in the Act of 1865, (sect. 13 and 14,) and in violation of the rights of the scholarship holders, and other donors to the funds of Jefferson College, to have tuition and the College maintained at Can onsburgh.

ASSIGNMENT OF ERRORS.

And the said plaintiffs come, and say, that there was manifest error by the Supreme Court of Pennsylvania—

1. In not granting the relief sought by the *first* prayer of the plaintiffs' bill, viz.:

"That the said Act of February 26th, 1869, be declared inoperative, null and void; as repugnant to the 17th section of Article 9th of the Constitution of Pennsylvania, and to Section 10th of the Constitution of the United States.

2. In not granting the relief sought by the *second* prayer of the plaintiffs' bill, viz.:

"That now by a preliminary, and hereafter by a final injunction, the said defendants be enjoined and restrained from removing, or causing to be removed, the said College, its property and classes, from Canonsburgh to Washington, or elsewhere."

3. In not granting further relief as prayed, according to the exigencies of the case.

4. In decreeing that the plaintiffs' bill be dismissed, with costs.

JAS. VEEGH,
Of Counsel for Plaintiffs in Error.

ARGUMENT.

Since the impetration of this writ of error, one of the plaintiffs, Rev. John T. Pressly, D.D., has died—which we ask to suggest of record.

The bill and prayers in this case are substantially the same with those in No. 470, filed in the name of the Trustees of Jefferson College, &c.—the only material difference being in the plaintiffs.

The bill does not seek to disturb the validity and operation of the Act of March 4, 1865, which created the Corporation, of which these plaintiffs are trustees; but asks to set aside, as invalid, the supplemental Act of 1869, under color of which the majority of the Trustees of Washington and Jefferson College have removed the entire College to Washington, and avow their determination, according to that Act, to dispose of the College property at Canonsburgh.

To avoid repetition, we ask to have the Arguments submitted in the other two (Nos. 470 and 472) of the series of cases, considered as made in this, so far as applicable.

That dissenting stockholders in, or members of, a Corporation have a right to be heard in—are proper parties to—a proceeding in equity to restrain the Corporation, acting by a majority of its functionaries or members, from doing an illegal act, is a proposition that will not, perhaps, be denied. It is based upon an elementary principle of equity jurisprudence, so well fixed as to preclude an array of authorities to sustain it.

"It is now no longer doubted," says Mr. Justice *Wayne*, in delivering the opinion of this Court in *Dodge*

vs. Woolsey, 18 Howard, 331, (341) "either in England or the United States, that Courts of Equity, in both, have jurisdiction over Corporations, *at the instance of one or more of their members*, to apply preventive remedies by injunction, to restrain those who administer them from doing acts which would amount to a violation of charters * * * * if the acts intended to be done create what is in law denominated a breach of trust."

To the same import are *Kean vs. Johnson*, 1 Stockton's (N. J.) Ch. Rep. 401;—and *Ward vs. The Society of Attorneys*, 1 Collyer's (Eng. Ch.) Rep. 370,—and *Lauman vs. R. R. Co.*, 6 Casey, 62, already cited in the case No. 470.

The learned State Court seems to have thought (Record, p. 28) that these plaintiffs ought not to be heard in complaint against the Act of 1869, because they did not complain of the Act of 1865;—as if they could complain of an Act which preceded their being as trustees, and of an Act which gave them being as such. And, because they did not complain of an Act which took away from Canonsburgh the lowest of the four College classes, but without any of its property, *ergo*, they should not be heard when they complain of an Act under color of which all are taken away. As if a lot holder did not rush into law against his neighbor who had encroached one foot upon him, he will not be allowed to complain of the neighborly act of taking from him all that was left!

The plaintiffs seek to discharged, as trustees under the Act of 1865, *all* the duties and obligations imposed upon them by the *contracts* which gave birth to, and are embodied in, that Act, as well as those, implied and express, which the College owes to those who have endowed it with its funds and property.

Believing that the Act of 1869, as acted upon by the majority of their co-trustees is violative of those duties

and obligations, they besought the State Court to declare it, and the action had under it, null and void, and now here, ask this Court to declare that said Act, as interpreted by the State Court, is unconstitutional and void; and that the rightful redress may be, through their intervention, given to those whose rights in the premises they are bound to protect.

JAS. VEECH,
GEO. W. WOODWARD,
GEO. SHIRAS, JR.,
Cons. pro Quer.